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ANTITRUST: A HANDBOOK FOR METRIC PLANNING AND CONVERSION.(U)
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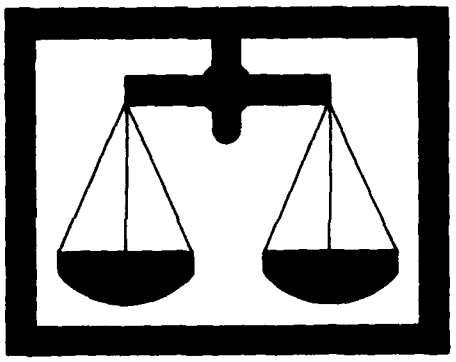

ANTITRUST:

A Handbook for Metric Planning and Conversion

UNITED STATES METRIC BOARD
MAY 1980

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This handbook presents a comprehensive examination of the principal antitrust questions which have arisen or appear likely to arise under the metrication planning and conversion process. The handbook developed from a perceived need of the private sector for guidance covering the antitrust implications of a metric conversion. The United States Metric Board's Office of General Counsel has prepared this document in consultation with the Antitrust Division of the Department of Justice and the Bureau of Competition of the Federal Trade Commission.

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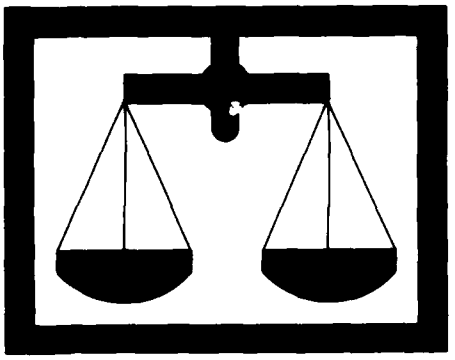

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Foreword

This handbook presents a comprehensive examination of the principal antitrust questions which have arisen or appear likely to arise under the metrication planning and conversion process. The handbook developed from a perceived need of the private sector for guidance covering the antitrust implications of a metric conversion. The United States Metric Board's Office of General Counsel has prepared this document in consultation with the Antitrust Division of the Department of Justice and the Bureau of Competition of the Federal Trade Commission.

The handbook offers to the metric planner a guide to the antitrust implications of the metrication process. The United States Metric Board hopes it will prove helpful.

Finally, the United States Metric Board wishes to make some acknowledgments. We are grateful for the assistance and cooperation we have received from the Department of Justice, the Federal Trade Commission, and the Private Sector Committees of the American National Metric Council. We also wish to thank the Law Office of Blum and Nash, which prepared the research data from which the handbook was derived.

I. Introduction

Discussions relating to joint metric conversion efforts by United States companies often raise questions about possible antitrust liability. The Sherman and the Federal Trade Commission Acts prohibit certain joint anticompetitive activity. Treble damage actions as well as civil and criminal penalties may result from violation of the antitrust laws.

Industry-wide metric conversion plans will require consultation and collaboration among competitors, suppliers, and others. How can such consultation and collaboration occur without running afoul of the antitrust laws?

Much of this activity—indeed probably most of it—does not raise serious antitrust enforcement issues. Yet uncertainty on this score may sometimes cause businesses to abandon or limit unobjectionable transactions, or to embark upon unnecessarily restrictive transactions which would not be undertaken if the antitrust risks were more clearly understood. This handbook is intended to help businesses plan metric conversion activity which the Department of Justice, the Federal Trade Commission, or private parties are not likely to challenge.

This handbook is intended to be of assistance to the non-lawyer. It is not intended to be a substitute for experienced private antitrust counsel. Moreover, it is not a substitute for the Department of Justice Business Review Procedure (see appendix), under which the Department may issue a statement of enforcement intention with respect to a specific pending transaction. Nor is it a substitute for the Advisory Opinion Procedure, which is the Federal Trade Commission's counterpart of the Business Review Procedure (see appendix).

II. Metrication Do's and Don'ts

As a general rule, mere consultation and collaboration among competitors, suppliers, customers, and others for the legitimate purpose of adopting and implementing industry-wide metric conversion plans will raise no antitrust problems. The principal concern of the antitrust enforcement authorities is that the forum created for this purpose does not become a forum for the illegitimate purpose of collaboration to restrict competition, or for the exchange of information which has the effect of restricting competition. In this respect, the risk of antitrust liability associated with metric conversion activity is no greater than the risk associated with normal trade association activity.

As for the metric conversion plan itself, the principal concerns of the antitrust enforcement authorities are whether or not the plan unnecessarily places some firms at a competitive disadvantage, raises barriers to entry, or stifles product improvement or innovation. In this respect, the risk of antitrust liability is not inherently greater than the risk associated with normal standardization activity. Historically, antitrust violations associated with standardization activities have been found only when the challenged activity has been, or has closely resembled, a *per se* violation, such as price fixing or group boycotts. But further antitrust enforcement, particularly by the FTC, can be expected to include a more detailed inspection of the effects of standardization activities to determine if they evidence underlying anticompetitive restrictions. However, guidance is available to reduce the risk of antitrust liability from standardization or metrication to a very low level.

Adherence to the following do's and don'ts, which have been reviewed by the Justice Department and the Federal Trade Commission in the standards-making context, should substantially minimize antitrust risks for companies that engage in joint efforts to develop and implement metric conversion plans. For any particular metric conversion activity which poses close and difficult antitrust questions, counsel should be consulted. Where the antitrust implications of such activity are uncertain even after review by experienced antitrust counsel, the Department of Justice Business Review Procedure should be considered. The Department is not likely to grant a business review request for the initial steps of coordinating industry-wide meetings or the development of a metric conversion plan because such initial steps do not raise antitrust problems. Where firms have developed and are prepared to adopt a specific metric conversion procedure or plan which has uncertain antitrust implications, the Business Review Procedure is appropriate. This procedure permits

that it helps assure that fairness will be a built-in feature of the conversion process. The recently published U.S. Metric Board Proposed Interim Private Sector Conversion Planning Guidelines (44 FR 65940) can assist in this regard.

5. *Written notice of proposals—prior to any formal decision to adopt target dates, standard metric sizes, etc., members of the industry should be given written notice of the proposal.*
Such notice will assure that members of the industry who may be adversely affected will have an opportunity to express objections to the proposal and to express their concerns.

6. *Release of information—any information developed relating to metric conversion should be made available to suppliers, purchasers, and the general public at the same time it is made available to industry members.*
The courts are suspicious of information developed and kept confidential by competitors. The courts are less likely to find a conspiracy based on information which is made available to the general public than if the information is shared only among competitors.

7. *Target dates—target dates should be reasonable.*
Individual companies must be free to determine if they will or will not adopt the target date. Unless a reasonable transition period is provided, dominant firms within an industry may be able to drive competitors, particularly small ones, out of the market. Unfortunately, no precise formula exists to determine if a date is "reasonable." However, if certain procedures are observed in determining the dates, the targets are likely to withstand scrutiny.

A broad spectrum of the industry should be involved in establishing such dates with representatives of small and medium-sized firms participating on an equal basis with representatives from large firms. Unfortunately, as a practical matter, small companies often do not have the resources to attend industry meetings or play an active role in making decisions about timing or other conversion issues. If such is the case, any industry group trying to set conversion target dates should make an effort to solicit comments from small companies in writing or through individual interviews and conversations. Some method must be developed to adequately assess the effect of any proposed target dates on small companies within the industry. If this is done, potential antitrust problems and adverse effects on small companies can be minimized.

8. *Conversion plans and target dates should be voluntary.*
Congress has decided that conversion to the metric system should be voluntary. Thus, target dates should be just that—target dates. Whether and when to convert must remain an individual company decision. Industry groups should not engage in any efforts to impose sanctions upon industry members who don't choose to convert or who do not conform to the association guidelines for conversion. Any trade group working cooperatively toward metrication should stress that all of its proposals are voluntary.

9. *Complaints—persons and companies should have an opportunity to air complaints.*
Such complaints may allege either procedural defects in the way a decision is reached or substantive defects in the decisions made. While a highly formalized complaint procedure need not be established in advance, any group should make an advance commitment to hear and try to resolve complaints as they arise. Thus, an industry group should probably designate a particular individual or group to be notified in the event a complaint develops.

Depending on the nature of the complaint, the group can determine what method should be used to fairly resolve it. It may be that the group will decide to appoint a committee to investigate the allegations in the complaint, or the group may decide to seek the assistance of an outside expert or objective entity to resolve the conflict.

10. *Price information–discussion of prices should be avoided.*
Price fixing is *per se* illegal. If any subject is off-limits, it is the discussion of prices. While the courts have permitted exchanges of data on past prices in some situations, the antitrust implications are simply too severe to risk any discussion of pricing information.

Not only should specific pricing discussions be avoided, but groups should also avoid discussions aimed at keeping prices down at the time of conversion. There may be general concern about a negative consumer reaction if prices increase at the time of metric conversion, and as a result some groups may desire to discuss ways to avoid such price increases.

However desirable agreements not to raise prices might be from a public relations standpoint, the antitrust laws simply do not permit such agreements. It is just as unlawful to agree to put a ceiling on prices as to set a minimum price. Sellers must be free individually to charge any price they see fit after conversion.

11. *Costs–specific costs should be avoided.*
Costs may be highly relevant to many conversion issues. For example, the costs of converting may be the single most important consideration in determining a feasible conversion date. Companies may want to promote a particular conversion timetable because of cost consideration, and cost concerns can rightly be indicated as the reason one date is preferred over another. Knowledge of the relevant cost of various alternative conversion plans is necessary to assess the impact of the plans on smaller competitors and consumers and is thus of primary importance to any decision to choose one plan over another. This knowledge can generally be obtained, however, without individual firms exchanging specific cost data. Instead, the metric conversion committee can obtain general cost estimates which will enable it to assess the relative costs of the various alternatives under consideration.

In addition to avoiding discussion of specific costs, groups should also avoid any discussion relating to how costs will be defrayed. For example, a member of a group might remark that his company will certainly pass any conversion costs along to the customer. While the speaker might be quite innocent in his or her intentions, the remark could be interpreted as an invitation to others to also pass on costs. If companies can be assured that their competitors intend to pass on all costs, there may be little or no reason for the company to internalize its conversion costs. In this manner, price competition could be inhibited.

12. *Inventories–discussion of existing or anticipated inventory size should be avoided.*
Knowledge about a competitor's inventory can lead to express or tacit agreements to hold back on supplies in order to affect prices; discussions pertaining to inventory size are viewed with deep suspicion by government antitrust enforcement agencies.

Inventory considerations could factor into conversion considerations in a number of ways. First, the size of existing inventories may be a consideration in determining conversion timing. If a manufacturer has a large supply of non-metric goods, the manufacturer will want time to market these before conversion occurs. While a company could advocate various timetables because of inventory considerations, the specifics of inventory size should not be articulated.

Second, for certain industries, it will be necessary to maintain a dual inventory for a certain period of time in order to service both metric and non-metric goods. This may present special problems, particularly for smaller companies within an industry. As a result, it may be useful for industry members to discuss methods of handling dual inventories. Although counsel should be consulted before such discussions and should be present during them, general problems and possible solutions to the dual inventory problem do not raise the same level of concern as would discussions about inventory size.

13. *Production data–do not discuss future production plans.*
Like inventory information, knowledge of competitors' production plans can be used to manipulate prices. For example, production can be held down in order to increase prices. In order to avoid price manipulation charges based on production information, competitors should not disclose production plans.

14. *Marketing programs—do not discuss future marketing plans.*
Although some general public relations programs of an educational nature may be part of a coordinated effort, companies should not engage in discussions about particular marketing plans or policies.

15. *Suppliers or customers—discussions favoring or urging boycotts should not take place.*
Group boycotts are prohibited under the antitrust laws. Thus, there should never be discussions that could be construed as implying that members of the industry should do business with only certain suppliers or customers or should not do business with certain suppliers or customers.

This does not mean that metric conversion groups cannot work with their suppliers to facilitate conversion. However, if meetings with suppliers take place, the same rules should be followed as with respect to intra-industry meetings. That is, the meetings should be open, all interested persons should be told of the meetings and invited to participate, and any information should be made available to everyone within the industry and to the general public.

Moreover, industry groups can, if they want, provide information about suppliers. For example, the antitrust laws do not prohibit an association from helping its members identify suppliers. If an industry group undertakes such activity, it must not do so in an arbitrary or exclusionary manner.

16. *Standardization and rationalization—establishing product standardization and rational sizes should be approached with care.*
Efficient metric conversion may involve some product standardization and rationalization. Standardization means establishing uniform characteristics for products. Rationalization occurs when a limited set of product sizes in a rational series is established. A survey by the General Accounting Office showed that businesses feel that one of the major benefits to be derived from metrication may be the opportunity to standardize and rationalize products.

Standardization and rationalization provide numerous benefits to businesses, including the ability to lower inventories for both producers and users through the elimination of unnecessary sizes, styles, and grades; earlier deliveries because of ability to stock common items; better understanding of how to use the commodity; and better performance at lower prices through reduced need for negotiations and more efficient inspection and testing. Standards benefit consumers by providing valuable technical information in a usable form, while rationalization increases the consumer's ability to compare prices.

The Justice Department and the Federal Trade Commission have taken the position that standardization and rationalization, in and of themselves, are not unlawful. Such cooperative efforts are likely to be challenged only when they are used to accomplish a prohibited end, such as raising prices or excluding competitors from the market, or where their effect is to unreasonably reduce consumer choices. Groups should avoid standards or rationalization plans which are unduly costly. Costly programs can drive small competitors from the market (see 1 i, above, concerning cost data).

Only a small number of the thousands of private voluntary industry standards have been the subject of antitrust litigation. No court has held that participation in a private industry standardization program, standing alone, constituted a violation of the antitrust laws.

17. *Work actively with the United States Metric Board.*
While it is clear that the Board has no authority to immunize anticompetitive conduct from antitrust attack, it should be able to provide very useful advice about the procedures to be followed in adopting a metrication plan.

18. *Consult antitrust counsel.*
Industry-wide conversion efforts will undoubtedly raise a number of antitrust issues which should be analyzed by competent counsel before they are implemented.

III. Overview of Relevant Antitrust Laws

The United States is committed to a free and competitive market economy. The extent of this commitment is illustrated in the antitrust laws which were enacted to assure the American public the continued benefits derived from a competitive private enterprise system.

Given their significant impact on the American marketplace, the substantive provisions of the antitrust laws are amazingly brief. The statutory law relevant to the metrication process is contained in Section 1 of the Sherman Act and Section 5 of the Federal Trade Commission Act. Section 1 of the Sherman Act prohibits "every contract, combination. . .or conspiracy, in restraint of trade. . . ." Section 5 of the Federal Trade Commission Act prohibits "unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce."

Substantive Provisions of the Antitrust Laws:

Section 1 of the Sherman Act prohibits all agreements or combinations in restraint of trade. The courts have not interpreted the provision literally, but instead have developed a "rule of reason" which holds unlawful only those agreements and combinations which unduly restrain trade.

Section 5 of the Federal Trade Commission Act prohibits "unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce". The prohibition against "unfair methods of competition" creates the Federal Trade Commission's basic antitrust jurisdiction. Congress wrote the FTC Act to supplement the Sherman Act and intended the phrase "unfair methods of competition" to be a broad and flexible directive to the Commission to adapt to a variety of diverse and evolving aspects of the American economy and to respond to market forces as they may change.

The law is clear that violations of either the Sherman Act or the Clayton Act are also violations of Section 5 of the FTC Act. Thus *per se* price fixing and boycott cases under the Sherman Act are also prohibited under the FTC Act.

Historically, the Commission has used Section 5 to curtail activities that are characteristic of violations of the Sherman Act. Such activities are called incipient violations—activities which have not quite blossomed into Sherman Act violations. Further, even though conduct may not involve all the precise elements necessary to constitute a violation of the Sherman or Clayton Acts, it becomes suspect and subject to Commission action under the FTC Act if it takes on the characteristics of a recognized antitrust violation. If conduct conflicts with the basic policies of the Sherman or Clayton Acts, even though such practices may not actually violate these laws, the Commission can take action under Section 5. Such action would be in the form of a cease-and-desist order to prohibit the unlawful activity and possibly to require affirmative action by the wrongdoer to assure that continuing public injury is terminated and effects of past conduct eliminated. These orders may require industry or corporate restructuring, corrective advertising and disclosures, or other appropriate affirmative action.

Under both provisions certain kinds of restraints are considered to be so patently inconsistent with free competition that they are deemed *per se* offenses, i.e., unlawful, regardless of whether or not there is a business justification for the practice. Included in this group are price fixing and collective or group boycotts.

Price fixing can be proved by circumstantial as well as direct evidence. Collective efforts to stabilize prices by buying surplus goods constitutes illegal price fixing. Moreover, detailed exchanges of price, cost, and production data can be used to infer price fixing. Courts are particularly suspicious of situations where information is not made available to the general public at the same time it is exchanged by competitors. Other factors which may give rise to an inference of price fixing are: (1) the exchange of information identifying individual buyers and sellers; (2) the opening of competitors' books to one another; (3) the reporting of transactions and examination of information without any time lag; and (4) the imposition of restrictions on an individual company's freedom of action.

Collective agreements to refuse to deal with another company are also *per se* illegal under Section 1. Any form of collective sanctions to sustain a restrictive scheme constitutes a *per se* violation.

An agreement to exclude competitors can also be shown by circumstantial evidence. If a restrictive plan is presented individually to members of an industry who know that the other members of the industry have been presented with the same plan and if the members are aware that it is to their collective advantage to adhere to the plan, the courts may infer an agreement. However, a defendant is able to overcome such an inference if it can offer plausible evidence to show that the conduct is independent in nature.

Other practices not so inherently anticompetitive that they fall in the *per se* category are only held unlawful after a full inquiry into the business justification for the challenged practice and a careful balancing of their competitive effects. These so-called "rule-of-reason cases" are never prosecuted criminally.

APPENDIX

§ 50.6 Antitrust Division business review procedure.

Although the Department of Justice is not authorized to give advisory opinions to private parties, for several decades the Antitrust Division has been willing in certain circumstances to review proposed business conduct and state its enforcement intentions. This originated with a "railroad release" procedure under which the Division would forego the initiation of criminal antitrust proceedings. The procedure was subsequently expanded to encompass a "merger clearance" procedure under which the Division would state its present enforcement intention with respect to a merger or acquisition; and the Department issued a written statement entitled "Business Review Procedure." That statement has been revised several times.

1. A request for a business review letter must be submitted in writing to the Assistant Attorney General, Antitrust Division, Department of Justice, Washington, D.C. 20530.

2. The Division will consider only requests with respect to proposed business conduct which may involve either domestic or foreign commerce.

3. The Division may, in its discretion, refuse to consider a request.

4. A business review letter shall have no application to any party which does not join in the request therefor.

5. The requesting parties are under an affirmative obligation to make full and true disclosure with respect to the business conduct for which review is requested. Each request must be accompanied by all relevant data including background information, complete copies of all operative documents and detailed statements of all collateral oral understandings, if any. All parties requesting the review letter must provide the Division with whatever additional information or documents the Division may thereafter request in order to review the matter. Such additional information, if furnished orally, shall be promptly confirmed in writing. In connection with any request for review the Division will also conduct whatever independent investigation it believes is appropriate.

6. No oral clearance, release or other statement purporting to bind the enforcement discretion of the Division may be given. The requesting party may rely upon only a written business review letter signed by the Assistant Attorney General in charge of the Antitrust Division or his delegate.

7. (a) If the business conduct for which review is requested is subject to approval by a regulatory agency, a review request may be considered before agency approval has been obtained only where it appears that exceptional and unnecessary burdens might otherwise be imposed on the party or parties requesting review, or where the agency specifically requests that a party or parties request review. However, any business review letter issued in these as in any other circumstances will state only the Department's present enforcement intentions under the antitrust laws. It shall in no way be taken to indicate the Department's views on the legal or factual issues that may be raised before the regulatory agency, or in an appeal from the regulatory agency's decision. In particular, the issuance of such a letter is not to be represented to mean that the Division believes that there are no anticompetitive consequences warranting agency consideration.

(b) The submission of a request for a business review, or its pendency, shall in no way alter any responsibility of any party to comply with the Premerger Notification provisions of the Antitrust Improvements Act of 1976, 15 U.S.C. 18A, and the regulations promulgated thereunder, 16 CFR, Part 801.

8. After review of a request submitted hereunder the Division may: state its present enforcement intention with respect to the proposed business conduct, decline to pass on the request, or take such other position or action as it considers appropriate.

9. A business review letter states only the enforcement intention of the Division as of the date of the letter, and the Division remains completely free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest. As to a stated present intention not to bring an action, however, the Division has never exercised its right to bring a criminal action where there has been full and true disclosure at the time of presenting the request.

10. (a) Simultaneously upon notifying the requesting party of and Division action described in paragraph 8, the business review request, and the Division's letter in response shall be indexed and placed in a file available to the public upon request.

(b) On that date or within thirty days after the date upon which the Division takes any action as described in paragraph 8, the information supplied to support the business review request and any other information supplied by the requesting party in connection with the transaction that is the subject of the business review request, shall be indexed and placed in a file with the request and the Division's letter, available to the public upon request. This file shall remain open for one year, after which time it shall be closed and the documents either returned to the requesting party or otherwise disposed of, at the discretion of the Antitrust Division.

(c) Prior to the time the information described in subparagraphs (a) and (b) is indexed and made publicly available in accordance with the terms of that subparagraph, the requesting party may ask the Division to delay making public some or all of such information. However the requesting party must: (1) Specify precisely the documents or parts thereof that he asks not be made public, (2) state the minimum period of time during which nondisclosure is considered necessary; and (3) justify the request for non-disclosure, both as to content and time, by showing good cause therefor, including a showing that disclosure would

have a detrimental effect upon the requesting party's operations or relationships with actual or potential customers, employees, suppliers (including suppliers of credit), stockholders, or competitors. The Department of Justice, in its discretion, shall make the final determination as to whether good cause for non-disclosure has been shown.

(d) Nothing contained in subparagraphs (a), (b) and (c) shall limit the Division's right, in its discretion, to issue a press release describing generally the identity of the requesting party or parties and the nature of action taken by the Division upon the request.

(e) This paragraph reflects a policy determination by the Justice Department and is subject to any limitations on public disclosure arising from statutory restrictions, Executive Order, or the national interest.

11. Any requesting party may withdraw a request for review at any time. The Division remains free, however, to submit such comments to such requesting party as it deems appropriate. Failure to take action after receipt of documents or information whether submitted pursuant to this procedure or otherwise, does not in any way limit or stop the Division from taking such action at such time thereafter as it deems appropriate. The Division reserves the right to retain documents submitted to it under this procedure or otherwise and to use them for all governmental purposes.

(28 U.S.C. 509 and 510; 5 U.S.C. 301)

[42 FR 11831, Mar. 1, 1977]

FEDERAL TRADE COMMISSION

PROCEDURES AND RULES OF PRACTICE

PART 1—GENERAL PROCEDURES

Subpart A—Industry Guidance

Advisory Opinions

§ 1.1 *Policy.*—(a) *Any person, partnership, or corporation may request advice from the Commission with respect to a course of action which the requesting party proposes to pursue. The Commission will consider such requests for advice and inform the requesting party of the Commission's views, where practicable, under the following circumstances:* (1) The matter involves a substantial or novel question of fact or law and there is no clear Commission or court precedent; (2) a proposed corporate merger or acquisition is involved; or (3) the subject matter of the request and consequent publication of Commission advice is of significant public interest.

(b) The Commission has authorized its staff to consider all requests for advice, where applicable, in those circumstances in which a Commission opinion would not be warranted. Hypothetical questions will not be answered, and a request for advice will ordinarily be considered inappropriate where (1) the same or substantially the same course of action is under investigation or is or has been the subject of a current proceeding involving the Commission or another governmental agency, or (2) an informed opinion cannot be made or could be made only after extensive investigation, clinical study, testing, or collateral inquiry.

§ 1.2 **Procedure.**—(a) *Application.* The request for advice or interpretation should be submitted in writing (one original and two copies) to the Secretary of the Commission and should (1) state clearly the question(s) that the applicant wishes resolved; (2) cite the provision of law under which the question arises; and (3) state all facts which the applicant believes to be material. In addition, the identity of the companies and other persons involved should be disclosed. Letters

relating to unnamed companies or persons may not be answered. Submittal of additional facts may be requested prior to the rendering of any advice.

(b) *Compliance matters.* If the request is for advice as to whether the proposed course of action may violate an outstanding order to cease and desist issued by the Commission, such request will be considered as provided for in § 2.41 of these Rules.

Organization, Procedures and Rules

§ 1.3 Advice.—(a) On the basis of the materials submitted, as well as any other information available, and if practicable, the Commission or its staff will inform the requesting party of its views.

(b) Any advice given by the Commission is without prejudice to the right of the Commission to reconsider the questions involved and, where the public interest requires, to rescind or revoke the action. Notice of such rescission or revocation will be given to the requesting party so that he may discontinue the course of action taken pursuant to the Commission's advice. The Commission will not proceed against the requesting party with respect to any action taken in good faith reliance upon the Commission's advice under this section, where all relevant facts were fully, completely, and accurately presented to the Commission and where such action was promptly discontinued upon notification of rescission or revocation of the Commission's approval.

(c) Advice rendered by the staff is without prejudice to the right of the Commission later to rescind the advice and, where appropriate, to commence an enforcement proceeding.

§ 1.4 Public Disclosure.—Written advice rendered pursuant to this Section and requests therefor, including names and details, will be placed in the Commission's public record immediately after the requesting party has received the advice, subject to any limitations on public disclosure arising from statutory restrictions, the Commission's rules, and the public interest. A request for confidential treatment of information submitted in connection with the questions should be made separately.

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